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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ZHIGANG BAI and JINGXU ZHAO,)	
)	No. C 07-5251 SI
Plaintiffs,)	
)	
v.)	ANSWER
)	
EMILIO T. GONZALEZ, Director of the United)	
States Citizenship and Immigration Services;)	
UNITED STATES CITIZENSHIP AND)	
IMMIGRATION SERVICES; MICHAEL)	
CHERTOFF, Secretary of the Department of)	
Homeland Security; PETER D. KEISLER,)	
Acting United States Attorney General;)	
ROBERT MUELLER, Director of the Federal)	
Bureau of Investigations; and FEDERAL)	
BUREAU OF INVESTIGATIONS,)	
)	
Defendants.)	

The Defendants hereby submit their answer to Plaintiffs' Complaint for a Writ in Nature of Mandamus to Compel Administrative Action.

I. INTRODUCTION

1. Defendants admit the allegations in Paragraph One.

II. PARTIES

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit the allegations in Paragraph Three.

1 4. Defendants admit the allegations in Paragraph Four.

2 5. Defendants admit the allegations in Paragraph Five.

3 6. Defendants admit the allegations in Paragraph Six.

4 7. Defendants admit the allegations in Paragraph Seven.

5 8. Defendants admit the allegations in Paragraph Eight.

6 **III. JURISDICTION and VENUE**

7 9. Paragraph Nine consists of Plaintiffs' characterizations of the lawsuit for which no answer
8 is necessary; however, to the extent a response is deemed to be required, Defendants deny the
9 allegations in Paragraph Nine.

10 10. Paragraph Ten consists of Plaintiffs' allegations regarding jurisdiction, to which no
11 responsive pleading is required; however, to the extent a responsive pleading is deemed necessary,
12 Defendants deny that this Court has jurisdiction under any of the provisions cited in Paragraph
13 Ten.

14 11. Paragraph Eleven consists of Plaintiffs' allegations regarding jurisdiction, to which no
15 responsive pleading is required.

16 12. Paragraph Twelve consists of Plaintiffs' allegations regarding venue, to which no
17 responsive pleading is required.

18 13. Paragraph Thirteen consists of Plaintiffs' allegations regarding fees, to which no
19 responsive pleading is required.

20 **IV. INTRADISTRICT ASSIGNMENT**

21 14. Defendants admit the allegations in Paragraph Fourteen.

22 **V. FACTUAL BACKGROUND**

23 15. Defendants admit the allegations in Paragraph Fifteen.

24 16. Defendants admit the allegations in Paragraph Sixteen, although USCIS records indicate
25 the I-140 petition was filed on August 9, 2005.

26 17. Defendants admit the allegations in Paragraph Seventeen.

27 18. Defendants admit the allegations in Paragraph Eighteen.

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VI. CAUSES OF ACTION**A. Facts Supporting Mandamus**

19. Defendants admit the first and second sentences in Paragraph Nineteen; however, Defendants deny the remaining allegations in this paragraph.

20. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty.

21. Defendants deny the allegations in Paragraph Twenty-One.

22. Defendants admit the allegations in Paragraph Twenty-Two.

23. Defendants deny the allegations in Paragraph Twenty-Three.

24. Defendants deny the allegations in Paragraph Twenty-Four.

25. Paragraph Twenty-Five consists of Plaintiffs' characterizations of the lawsuit for which no answer is necessary; however, to the extent a response is deemed to be required, Defendants deny the allegations in Paragraph Twenty-Five.

26. Defendants deny the allegations in Paragraph Twenty-Six.

27. Defendants deny the allegations in Paragraph Twenty-Seven.

B. Violation of the Administrative Procedure Act

28. Defendants admit the allegations in Paragraph Twenty-Eight.

29. Defendants admit the allegations in Paragraph Twenty-Nine.

30. Defendants deny the allegations in Paragraph Thirty.

31. Defendants are without sufficient information or knowledge to either admit or deny the allegations in Paragraph Thirty-One.

VII. PRAYER FOR RELIEF

The remaining paragraphs consists of Plaintiffs' prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The court should dismiss the Complaint for lack for subject matter jurisdiction.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiffs, dismissing Plaintiffs' Complaint with prejudice; that Plaintiffs take nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: December 21, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/
EDWARD A. OLSEN
Assistant United States Attorney
Attorneys for Defendants